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CHURCH OF SCIENTOLOGY  
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY ) CASE NO. BC 157680  
14 INTERNATIONAL, a California not- )  
for-profit religious corporation, )  
15 ) PLAINTIFF'S REPLY IN  
16 ) SUPPORT OF MOTION FOR (1)  
2 ) SUMMARY ADJUDICATION OF THE  
17 ) FIRST CAUSE OF ACTION OF  
Plaintiff, ) ARMSTRONG'S FIRST AMENDED  
18 ) CROSS-COMPLAINT; (2)  
vs. ) SEVERANCE; (3) DISMISSAL OF  
19 ) UNADJUDICATED CLAIMS; AND  
20 ) (4) ENTRY OF FINAL JUDGMENT  
GERALD ARMSTRONG; DOES 1 through )  
21 25, inclusive, )  
22 ) DATE: December 1, 1995  
Defendants. ) TIME: 9:00 a.m.  
23 ) DEPT: 1  
24 ) TRIAL DATE: Vacated  
25 )  
26 )  
27 )  
28 )

1 I. INTRODUCTION

2 The motion made by plaintiff, Church of Scientology  
3 International, asks the Court to enter a series of orders  
4 designed to bring the breach of contract aspects of this case to  
5 an orderly conclusion. It is solidly based on the prior orders  
6 of this Court, the Los Angeles Superior Court, and the Second  
7 Circuit Court of Appeal, all issued in this case.

8 Armstrong has not responded to the bulk of the motion. The  
9 Church's requests for severance of the fraudulent conveyance  
10 action, dismissal of the remaining breach claims, and an  
11 acknowledgment that the Church is the prevailing party, entitled  
12 to attorneys' fees and costs, are not opposed, and should be  
13 granted.

14 The only issue which Armstrong has addressed is whether the  
15 Church is entitled to summary adjudication in its favor of  
16 Armstrong's claim for declaratory relief. His response to that  
17 issue is at best inappropriate, and at worst sanctionable. He  
18 has:

19 1. Falsely asserted that this Court "has not ruled on  
20 Armstrong's defense based on First Amendmet (sic) religious  
21 liberty principles;"

22 2. Used this false assertion to improperly re-argue the  
23 merits of motions which he has already lost;

24 3. Used this false assertion to re-file evidence which the  
25 Court ordered stricken; and

26 4. Filed papers that are nearly identical in content to  
27 his "points and authorities in support of motion for  
28

1 reconsideration," to which the Church has separately responded.<sup>1</sup>

2         None of Armstrong's renewed vitriol, however, responds to  
3 the undisputed facts presented by the Church's concise moving  
4 papers. The records of this case demonstrate that every argument  
5 made by Armstrong in this opposition has been made by him before,  
6 sometimes three, four or five times, and that in each case he has  
7 chosen to simply ignore the court's earlier rulings. However,  
8 neither he, nor the Court, is permitted to do this. The  
9 jurisdictional nature of C.C.P. Section 1008 mandates that a  
10 Court may only reconsider its own earlier order by properly  
11 following the dictates of that section.

12                                 II. STATEMENT OF FACTS

13         Armstrong begins his opposing papers by asserting that,  
14 "[t]he Court has not ruled on Armstrong's defense based on First  
15 Amendmet (sic) religious liberty principles," [Oppo., also  
16 labelled "Points and Authorities in Support of Motion for  
17 Reconsideration," at 1], and using this as the foundation on  
18 which he bases the rest of his argument. However, Armstrong is  
19 wrong. Not only did this Court just rule on this defense last  
20 month, while granting two motions for summary adjudication, but  
21 the issue was also decided by Judge Sohigian in 1992, and by the  
22 Second District Court of Appeal in 1994.

23 \_\_\_\_\_  
24 <sup>1</sup> Armstrong's opposition to this motion consists entirely of  
25 arguments which he made in his motion for reconsideration, with  
26 the exception of the introduction, the conclusion and a footnote.  
27 In his word-processing frenzy, he has even duplicated the title  
28 of the paper incorrectly (p.1). Rather than clutter the Court's  
files with still more paper, plaintiff declines to re-process its  
opposition to the reconsideration motion, set for hearing on the  
same day, and instead incorporates it herein by reference as if  
set forth in its entirety.

1           Indeed, Armstrong has argued that the Agreement violates his  
2 right to speak freely about religious matters since the very  
3 first motion in this case. The Court of Appeal responded quite  
4 decisively, holding that,

5           Although Armstrong's "freedom of speech" is  
6 affected, it is clear that a party may voluntarily by  
7 contract agree to limit his freedom of speech. (See In  
8 re Steinberg (1983) 148 Cal.App.3d 14, 18-20 [filmmaker  
9 agreed to prior restraint on distribution of film]; ITT  
10 Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d  
11 307, 319 [employee's agreement not to disclose  
12 confidential information; "it is possible to waive even  
13 First Amendment free speech rights by contract"]; Snepp  
14 v. United States (1980) 444 U.S. 507, 509, fn. 3 [book  
15 by CIA employee subject to prepublication clearance by  
16 terms of his employment contract].)

17 [Ex. J to Request for Judicial Notice, Moving Papers, at 8-9]<sup>2</sup>

18           Just last month, Armstrong made his religious beliefs the  
19 cornerstone of his response to two motions for summary  
20 adjudication brought by the Church. Arguing that "Armstrong  
21 believes that his entire relationship with Scientology over the  
22 past 25 years has been divinely inspired, and that God has called  
23 upon Armstrong to speak out,"<sup>3</sup> he filed 10 volumes of "evidence,"  
24 most of it concerning his mistaken interpretation and criticism  
25 of Scientology's beliefs. In its Order of Summary Judgment as to  
26

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27 <sup>2</sup> Unless otherwise noted, all references are to exhibits to the  
28 Request for Judicial Notice which was filed with the moving  
papers.

<sup>3</sup>This argument consumes two pages of Armstrong's brief in  
Opposition to Motion for Summary Adjudication on (sic) the  
Twentieth Cause of Action, (pp. 19-20) and is incorporated by  
reference into his Opposition to Motion for Summary Adjudication  
on the Thirteenth, Sixteenth, Seventeenth and Nineteenth Causes  
of Action (p.1). The Separate Statements devote 90 paragraphs to  
speech/religious allegations, and refer to more than 69 exhibits  
that purport to relate to these issues. Armstrong has repeated  
all of these allegations in his separate statement herein  
(verbatim), and refers to all of the same evidence.

1 the Thirteenth, Sixteenth, Seventeenth and Nineteenth Causes of  
2 Action ["the Summary Judgment Order"] filed on October 17, 1995,  
3 this Court ruled directly on this defense, granting summary  
4 adjudication and holding,

5 FIRST AMENDMENT: First Amendment rights may be  
6 waived by contract. (See *ITT Telecom Products Corp. v.*  
*Dooley* (1989) 214 Cal.App.3d 307, 319.)

7 [Ex. D at 4]

8 This Order was signed on October 17, 1995, and served on  
9 Armstrong the next day. Although Armstrong has filed a motion  
10 for reconsideration concerning the Order of Permanent Injunction,  
11 to which the Church has separately responded, he has not moved  
12 for reconsideration of this Order.

### 13 III. ARGUMENT

#### 14 A. Armstrong May Not Use His Opposition To Re-Argue Matters 15 That Have Already Been Decided

16 Code of Civil Procedure Section 1008(a) provides in  
17 pertinent part,

18 When an application for an order has been made to  
19 a judge, or to a court, and . . . granted . . . any  
20 party affected by the order may, within 10 days after  
21 service upon the party of written notice of entry of  
22 the order and based upon new or different facts,  
23 circumstances, or law, make application to the same  
24 judge or court that made the order, to reconsider the  
25 matter and modify, amend, or revoke the prior order.  
26 The party making the application shall state by  
27 affidavit what application was made before, when and to  
28 what judge, what order or decisions were made, and what  
new or different facts, circumstances, or law are  
claimed to be shown.

This section "is the exclusive means for modifying, amending  
or revoking an order. That limitation is expressly  
jurisdictional.'" Gilberd v. AC Transit (1995) 32 Cal.App.4th  
1494, 1499 38 Cal.Rptr.2d 626, quoting, Morite of California v.

1 Superior Court (1993) 19 Cal.App.4th 485, 590, 23 Cal.Rptr.2d 666  
2 (emphasis supplied). Moreover, "[a]ccording to the plain  
3 language of the statute, a court acts in excess of jurisdiction  
4 when it grants a motion to reconsider that is not based upon 'new  
5 or different facts, circumstances, or law.'" Gilberd. at 1500.

6 A party is not permitted to obtain reconsideration of a  
7 Court's prior order by attacking it collaterally, rather than  
8 bringing a 1008 motion. In Morite of California, supra, the  
9 superior court granted petitioner's motion to stay a declaratory  
10 relief proceeding until after the trial in a related case. Two  
11 years later, before the related case had been tried, the case was  
12 assigned to another superior court judge. On a status conference  
13 questionnaire, the respondent requested that the court set the  
14 matter for trial -- in effect, vacating the earlier order. The  
15 court did so, over petitioner's objection that the jurisdictional  
16 limitations of C.C.P. §1008 prohibited the Court from changing  
17 the stay order.

18 The Court of Appeal issued a writ of mandate commanding the  
19 superior court to vacate the order setting the case for trial. In  
20 so holding, the Court said,

21 [I]f courts may simply ignore interim orders  
22 instead of modifying, amending or revoking them after  
23 due consideration, then the procedural, substantive and  
24 jurisdictional requirements of section 1008 are  
25 meaningless. By making section 1008 expressly  
26 jurisdictional, the Legislature clearly intended to  
prevent courts from modifying, amending or revoking  
prior orders without due reconsideration. Ignoring  
(i.e., implicitly revoking) interim orders, such as the  
prior stay order, undermines the Legislative intent  
behind section 1008, subdivision (e).

27 19 Cal.App.4th at 492-493.

28 Here, Armstrong argues that his "First Amendment Defense"

1 has not been ruled on, and is dispositive of plaintiff's motion.  
2 He is wrong on both counts. As demonstrated in Part II, supra,  
3 the defense has, indeed, been ruled upon, and against Armstrong.  
4 Moreover, his defense is factually irrelevant to a motion for  
5 summary adjudication of a cross-claim.

6 Assuming, arguendo, some relevance to Armstrong's lengthy  
7 religious argument, Armstrong may not raise it again here, in the  
8 context of an opposition to plaintiff's motion. Morite  
9 demonstrates that a new motion does not open the door for a party  
10 to obtain reconsideration of a prior order. That requires a  
11 motion for reconsideration, made within ten days, along with an  
12 affidavit describing the order and the new facts or law which  
13 justifies the motion. Armstrong did not move for reconsideration  
14 of the Summary Judgment Order and, with no new facts or law  
15 presented within 10 days, may not. Assuming arguendo that  
16 Armstrong's First Amendment defense has relevance to a motion for  
17 summary adjudication of his cross-claim, it has already been  
18 decided against him.

19 **B. Armstrong Should Not Be Permitted To Refile**  
20 **Exhibits Which Were Previously Stricken**

21 Armstrong has refiled documents in support of his opposition  
22 which this court has already stricken. In granting CSI's  
23 previous motion to strike, this Court held,

24 The plaintiff has asked that the exhibits which  
25 were previously ordered sealed be stricken as they are  
26 trade secrets, irrelevant to this motion. This request  
is GRANTED. They are not relevant. Further, they were  
filed by Mr. Armstrong *in pro per* when he is, in fact,  
represented by counsel.

27 [Court, Ruling of October 6, 1995, p. 2.] The Court thus held  
28 that the documents in question were trade secrets, and not

1 relevant to the matters at issue. They are still trade secrets,  
2 and they are still not relevant to anything at issue in this  
3 case.<sup>4</sup> This is underscored by the fact that Armstrong has filed  
4 no new evidence in opposition to this motion, but simply re-word-  
5 processed his opposition to earlier summary adjudication motions.  
6 The documents in question should be stricken, and Armstrong and  
7 his counsel sanctioned for filing them with the Court yet again.

8 **C. The Church Is Entitled To Summary Adjudication**

9 As demonstrated in the moving papers, no triable issue of  
10 fact remains as to Armstrong's cross-claim for declaratory  
11 relief. His questions have all been answered by this Court's  
12 rulings in the main action. When the issues presented by a  
13 cross-claim for declaratory relief are fully resolved against the  
14 cross-complainant by resolution of claims contained in the  
15 complaint, it is proper for the court to enter a judgment against  
16 the cross-complainant on the cross-claim. International

17 Association of Firefighters, Local No. 1319, AFL-CIO v. City of  
18 Palo Alto (1963) 60 Cal.2d 295, 32 Cal.Rptr. 842, 845-846.

19 Summary judgment is an appropriate procedure to use to resolve a  
20 declaratory relief action. Allis-Chalmers Corp. v. City of Oxnard  
21 (1981) 126 Cal.App.3d 814, 818 n.3, 179 Cal.Rptr. 159, 161 n.3.

22 Here, the only relief which Armstrong seeks is

23 [A] judicial determination of his rights and

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24  
25 <sup>4</sup> At the time that the earlier summary adjudication motions were  
26 ruled on, plaintiff filed CSI's objections to Armstrong's  
27 Evidence in Support of Opposition to Plaintiffs' Pending Motions  
28 for Summary Adjudication; Motion to Strike Evidence; and Request  
for Sanctions Against Gerald Armstrong and Ford Greene. Since  
Armstrong has chosen to rely on precisely the same evidence that  
he filed before, plaintiff renews those objections and that  
motion without refileing duplicate papers.



1 duties, and a declaration that the only provisions of  
2 the settlement agreement which are valid are those  
3 which directly pertain to the dismissal of his cross-  
4 complaint in Armstrong I in consideration for the  
5 payment of a sum of money, and that paragraphs 4A, 4B,  
6 7D, 7G, 7H, 7I, 10, 18D, 18E of the settlement  
7 agreement should be severed and held not to be legally  
8 enforceable because they were designed to suppress  
9 evidence and obstruct justice.

6 [Ex. G to Request for Judicial Notice, Verified Amended Cross-  
7 Complaint, p.29, ¶ 61]

8 As demonstrated above and in the moving papers, this Court  
9 has already judicially determined all of these issues against  
10 Armstrong. Under these circumstances, the Church is entitled to  
11 summary judgment of Armstrong's cross-claim for declaratory  
12 relief, declaring that Armstrong is not entitled to any of the  
13 relief which he requested.

14 D. The Remainder Of Plaintiff's Motion Should Also Be Granted

15 In an effort to resolve this case as rapidly as possible,  
16 plaintiff has also asked the Court to take a series of steps  
17 which will effectively end litigation in the breach of contract  
18 case. Armstrong has not opposed these. Accordingly, and for all  
19 of the reasons set forth in the moving papers, the Church  
20 requests that the Court:

21 1. Enter an order of summary adjudication in favor of  
22 plaintiff/cross-defendant and against defendant/cross-  
23 complainant on the First Cause of Action for Declaratory  
24 Relief contained in Armstrong's First Amended Cross-  
25 Complaint from the original breach of contract case. This  
26 cross-claim is the only remaining claim of Armstrong's, and  
27 it seeks declaratory relief as to provisions of the contract  
28 which this Court has already enforced against Armstrong;

1                   2.     Enter an order severing the fraudulent  
2 conveyance action from the breach case. The  
3 adjudication of this action as to Armstrong is stayed  
4 pending the bankruptcy, and the action at present  
5 belongs to the trustee in bankruptcy, who has not  
6 relinquished it; and

7                   3.     Enter an order dismissing those of plaintiff's  
8 claims not already adjudicated by summary adjudication.

9                   Once these matters have been resolved, all of the issues  
10 remaining in this case will have been finally adjudicated in  
11 plaintiff's favor. The Church requests that the Court enter  
12 final judgment for the Church in the form of the Orders granting  
13 summary adjudication, including permanent injunction and \$300,000  
14 in damages, together with costs and fees as prayed in the Second  
15 Amended Complaint. The Church also requests that the Court  
16 adjudicate that it is the prevailing party on the contract,  
17 pursuant to Civil Code Section 1717, and thus entitled to recover  
18 its attorneys' fees and costs.

19   IV.   CONCLUSION

20                   Armstrong has presented no relevant arguments or evidence in  
21 opposition to plaintiff's motion for summary adjudication.  
22 Instead, he argues that the Court has not already ruled, when it  
23 has, and improperly seeks reconsideration of that ruling. This  
24 attempt to covertly obtain reconsideration should be rejected.  
25 Further, Armstrong has not opposed the remainder of the Church's  
26 motion. It should, accordingly be granted.

27                   Therefore, the plaintiff, Church of Scientology  
28 International, requests that this Court enter final judgment in

1 its favor, by (1) granting the motion for summary adjudication of  
2 Armstrong's last remaining cross-claim; (2) severing the  
3 fraudulent conveyance action from the breach case; (3) dismissing  
4 those of plaintiff's claims which have not yet been adjudicated;  
5 and (4) entering final judgment against Armstrong pursuant to  
6 plaintiff's motions for summary adjudication already granted, in  
7 the amount of \$300,000 and a permanent injunction, together with  
8 attorneys' fees and costs.

9 Dated: November 22, 1995

Respectfully submitted,

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Andrew H. Wilson  
WILSON, RYAN AND CAMPILONGO

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MOXON & BARTILSON

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By: Laurie J. Bartilson  
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Attorneys for Plaintiff  
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PROOF OF SERVICE

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF LOS ANGELES        )

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On November 22, 1995 I served the foregoing document described as PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

Ford Greene  
HUB Law Offices  
711 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

MICHAEL WALTON  
700 Larkspur Landing Circle  
Suite 120  
Larkspur, CA 94939

[ ] \*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal

cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on November 22, 1995 at Los Angeles, California.

[ ] **\*\* (BY PERSONAL SERVICE)** I delivered such -- envelopes by hand to the offices of the addressees.

Executed on \_\_\_\_\_, at \_\_\_\_\_, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Abel E. Demura

Print or Type Name

Abel E. Demura

Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)